

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>LINDA GALLUPS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL ACTION NUMBER</b>
	)	<b>2:09-cv-00842-WMA</b>
<b>WYETH, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

## MOTION TO DISMISS PLAINTIFF’S CLAIMS FOR FRAUD AND PUNITIVE DAMAGES

Come now defendants Amgen Inc., Amgen USA, Immunex Corporation, and Wyeth, Inc., on its own behalf and on behalf of its unincorporated division, Wyeth Pharmaceuticals (referred to collectively as “Defendants”) and move the Court to dismiss plaintiff’s claims for fraud and punitive damages pursuant to Federal Rules of Civil Procedure 9(b) and (12)(b)(6). As grounds for this motion, Defendants show unto the Court as follows:

1. Plaintiff allegedly suffered injuries because of Enbrel®, which was prescribed for treatment of plaintiff's psoriasis. She claims damages from Defendants for violation of the Alabama Extended Manufacturers Liability Doctrine (Count I), failure to warn (Count II), negligence (Count III), and fraud,

misrepresentation, suppression, and concealment (Count IV). In Count V, plaintiff alleges intentional and wanton conduct and requests punitive damages.

2. Plaintiff has not alleged the circumstances constituting defendants' alleged fraud with sufficient particularity, since the package insert for Enbrel®, which is incorporated by reference in the Complaint, contains express warnings for the specific injuries that allegedly befell plaintiff.

3. Plaintiff's fraud claim, whether based on misrepresentation, suppression or concealment, fails to state a claim in light of the clear warnings contained in the Enbrel® package insert.

4. Likewise, plaintiff's request for punitive damages should be dismissed because she cannot allege intentional wrongful conduct because of the package insert's warnings.

5. Support for Defendants' motion is more fully set forth in the Memorandum of Law in Support of Defendants' Motion To Dismiss Plaintiff's Claims for Fraud and Punitive Damages filed simultaneously with this motion.

Respectfully Submitted,

/s/ Maibeth J. Porter  
MAIBETH J. PORTER

Attorney for Defendants Amgen Inc.,  
Amgen USA, Immunex Corporation,  
and Wyeth, Inc., on its own behalf

and on behalf of its unincorporated  
division, Wyeth Pharmaceuticals.

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

Attorneys at Law

Suite 2400 Regions/Harbert Plaza

1901 Sixth Avenue, North

Birmingham, Alabama 35203-2602

Telephone: (205) 254-1000

Telecopier: (205) 254-1999

OF COUNSEL FOR DEFENDANTS

AMGEN INC., AMGEN USA, AND IMMUNEX  
CORPORATION:

Ms. Lauren S. Colton

HOGAN & HARTSON

111 South Calvert St., Suite 1600

Baltimore, Maryland 21202

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of June, 2009, a true copy of the Motion to Dismiss Plaintiff's Claims for Fraud and Punitive Damages was served via the electronic filing system of the Court and by first-class mail, postage pre-paid on:

Mr. W. Todd Harvey  
Ms. Camille L. Edwards  
BURKE HARVEY & FRANKOWSKI, LLC  
One Highland Place  
2151 Highland Avenue  
Suite 120  
Birmingham, Alabama 35205  
E-mail: tharvey@bhflegal.com  
cedwards@bhflegal.com

Mr. Roger C. Denton  
Ms. Kristine K. Kraft  
Ms. Elizabeth M. Wilkins  
SCHLICHTER, BOGARD & DENTON  
100 South 4th Street  
Suite 900  
St. Louis, Missouri 63102  
Attorneys for Plaintiff, Linda Gallups  
Email: rdenton@uselaws.com  
kkraft@uselaws.com  
bwilkins@uselaws.com

/s/ Maibeth J. Porter